

## **REMARKS**

### **A. Summary Of Interview**

Applicant's attorney would like to thank the Examiner for interviewing this case on June 18, 2003. During that interview, Applicant's attorney showed the Examiner samples of the prior art child spill-proof cups. All of these samples were of a single wall construction. Applicant's attorney then showed the present invention and a cut-away portion of the present invention showing the dual wall construction.

Applicant's attorney also discussed the prior art that was relied on to reject the claims. In view of the Noll patent, there was an agreement to limit the claim to the dimensions of a child spill proof cup in an attempt to distinguish over the Noll patent.

### **B. Amendment To The Drawings**

The Examiner has required that a proposed drawing be submitted to show "the cap has a spout that projects from one side thereof upwardly, the spout is formed integrally with the cap and includes a front and rear walls that converge to an outwardly protruding tip of the spout" and "a valve located adjacent to or incorporated into the spout wherein the valve substantially prevents a liquid from leaking out of the spout." Attached as "Fig. 10" and "Fig. 10A" are 2 drawings showing such features. The specification has been edited accordingly.

There is no new matter added. For example, at page 2, the specification discloses "a valve located adjacent to or incorporated into the spout wherein the valve substantially prevents a liquid from leaking out of the spout." In another example, page 13 of the specification discloses "a valve on the under side of the lid may substantially prevent liquid from leaking out of the spout. Examples of valves that may be used with the present invention include, but are not limited to, the valves disclosed in United States Patent Nos. 5,079,013, 5,542,670, RE37,016, and 6,050,445, which are incorporated by reference herein. In use, the child typically places his/her lips around the spout, tilts the cup up and sucks out the liquid volume."

In a further example, page 14 of the specification discloses "the cap has a substantially flat top with a depending collar. The collar has an internal thread adapted to threadedly engage the threaded upper end of the cup. A collar includes an inner flange that extends around the cap concentrically with and inside of the thread. The inner flange forms a recess for receiving a washer-like sealing ring, which ring is adapted to sealingly engage an upper edge of the cup to

form a seal between the cap and the cup. The washer-like sealing ring could be eliminated if desired. In addition, the top of the cap may have a generally circular shape, and a spout projects from one side thereof upwardly. The spout is formed integrally with the cap, and includes generally arcuate front and rear walls that converge to an outwardly protruding tip of the spout. In one example, the tip may include one or more spaced-apart openings, the size and area of which are chosen to provide adequate fluid flow to a young user. In another example, a cylindrically shaped or barrel-shaped tubular flange may extend downwardly from the bottom of the spout. In use, the cover is screwed on to the top of the container by cooperant threads.”

### C. Amendment To The Claims

Claims 9, 10, 12 – 18, 21, 29, 30, 32 – 37, 40, 41, 43 – 48, 53, 54 and 56 – 61 are pending. The claims have been amended to expedite prosecution of this patent application.

The amendments to the claims are fully supported by the originally filed specification and thus, no new matter has been added. For example, support for the added limitations of the dimensions of the cup can be found at page 13 of the specification that discloses:

It is understood that the phrase “spill-proof” means the use of a cup by children with a cover and spout that minimizes spilling when tilted or put upside down but does not mean that the cup prevents leakage when tilted or put upside down. These “spill proof cups” are typically used by children under the age of five. Conventionally, the cups are injection molded of high density polyethylene (“HDPE”) and are composed of a cup body and a removable screw-top or comparable lid. Moreover, there are typically two cup sizes commonly used: (1) a 6-ounce cup and (2) a 9-ounce cup. The 6-ounce cup is approximately 4” tall with a lid diameter of 2 ¼”. The 9-ounce cup is approximately 6” tall with the same lid diameter as the 6-ounce cup. The lid typically has a spout on top where the child can access the liquid contents.

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It is further understood that the dimensions of the “spill-proof” cup assembly may be limited to: (a) a maximum outside diameter of the outer cup by the size of a typical child’s hand so the child can sufficiently grasp the cup; (b) a maximum height of the cup so that so that the cup does not easily tip over when containing liquid; and (c) a minimum inside diameter of the inner cup that meets the fluid volume requirement of the cup (e.g. 6 or 9 oz. cup). Once these dimensions are specified, the dimension of the “air” gap between the outside diameter of the inner cup and the inside cup of the outer cup will be limited within a fixed range.

Support for the additional limitation detailing the test method can be found at pages 23 and 24 where the details of the “cup insulation test method” are disclosed and at pages 21 and

22 where the details of the “drop test method” are disclosed. This amendment overcomes the Examiner’s Section 112 rejection concerning the meaning of the “cup insulation test method” and “the drop test method.”

**D. Response To Section 102 And 103 Rejections**

Since the size and shape of the “child spill-proof cup” is limited, due to a typical child’s hand, there is no teaching or suggestion that one could achieve the claimed insulating ability -- “sufficient insulation ability so that the cup assembly takes at least about 100 minutes to reach 70°F when tested by the cup insulation test method comprising the steps of adding 38 F water with 2 ice cubes to fill the cup and then recording the time that the water reaches 70 F.”

In fact, as discussed above, there is a “teaching away” that one could achieve the claimed insulating ability due to the size constraints – “(a) a maximum outside diameter of the outer cup by the size of a typical child’s hand so the child can sufficiently grasp the cup; (b) a minimum inside diameter of the inner cup that meets the fluid volume requirement of the cup (e.g. 6 or 9 oz. cup).”

In addition, there is no teaching or suggestion that the claimed cup insulation test method (i.e. comprising the steps of adding 38 F water with 2 ice cubes to fill the cup and then recording the time that the water reaches 70 F) could be achieved with the any of the prior art, which was cited by the Examiner.

For example U.S. Patent No. 3,661,288 (the “Noll patent”) does not disclose, teach nor suggest any of the following presently claimed limitations: a) the dimensions of the bottle including: i) the diameter; ii) the wall thickness; or iii) the gap between the inner and outer walls; b) the amount of insulation achieved; or c) impact strength resistance when dropped. In fact, the only figure shown in the Noll patent illustrates a baby bottle that is substantially different than the claimed features of the present invention.

Moreover, the only relevant information that the Noll patent discloses is in only one sentence: a) “the bottom and walls whereof are constructed to give an airspace by spaced apart elements;” b) “vacuum sealed at the top”; and c) “packed with insulable filling” (col. 1/lines 15-18). The abstract states “fully insulated to retain for substantial periods of time the imposed temperature of the fluid ingredients contained therein.” Clearly, the Noll patent is so hopelessly vague as to dimensions of the baby bottle and the insulation ability so as to render this reference

useless when applied to the presently claimed invention.

In addition, in contrast to the Examiner's statement that the Noll patent discloses "the structure required by the limitation" – "sufficient insulation ability so that the cup assembly takes at least about 100 minutes to reach 70°F when tested by the cup insulation test method comprising the steps of adding 38 F water with 2 ice cubes to fill the cup and then recording the time that the water reaches 70 F," the claimed insulation test method is directly based on the claimed structure (e.g. dimensions claimed). Therefore, since the Noll patent fails to disclose, teach or suggest any of the above-identified dimensions, the Noll patent fails to disclose, teach or suggest the claimed "insulation ability so that the cup assembly takes at least about 100 minutes to reach 70°F when tested by the cup insulation test method comprising the steps of adding 38 F water with 2 ice cubes to fill the cup and then recording the time that the water reaches 70 F."

Concerning the combination of U.S. Patent Nos. 2,895,636 ("the Martin patent") in view of U.S. Patent No. 5,890,621 ("the Bachman et al patent"), the presently claimed invention is clearly novel and non-obvious over this combination. For example, in contrast to the Examiner's statement that "the cup does not require any structure that is not in the reference," the amended claims clearly do require a structure that is not in the reference."

As detailed above, since the size and shape of the "child spill-proof cup" is limited, due to a typical child's hand, there is no teaching or suggestion that one could achieve the claimed insulating ability -- "sufficient insulation ability so that the cup assembly takes at least about 100 minutes to reach 70°F when tested by the cup insulation test method comprising the steps of adding 38 F water with 2 ice cubes to fill the cup and then recording the time that the water reaches 70 F." In fact, as discussed above, there is a "teaching away" that one could achieve the claimed insulating ability due to the size constraints – "(a) a maximum outside diameter of the outer cup limited by the size of a typical child's hand so the child can sufficiently grasp the cup; (b) a minimum inside diameter of the inner cup but that still meets the fluid volume requirement of the cup (e.g. 6 or 9 oz. cup)."

Neither patent teach nor suggest the claimed cup insulation test method (i.e. comprising the steps of adding 38 F water with 2 ice cubes to fill the cup and then recording the time that the water reaches 70 F).

In addition, the Martin patent actually teaches away from being able to achieve the claimed insulating ability with the claimed dimensional requirements. For example, each every

figure of the Martin patent shows a handle attached to the cup (see e.g. Figs. 1, 2, 4, 5 and 8) or a huge gap between the inner and outer walls (see e.g. Figs. 7 and 8). Thus, in contrast to the present invention that is limited to an outside dimension of the cup so that a typical child's hand can sufficiently grasp the cup but still achieve the claimed insulating ability, the Martin patent has a handle or a huge gap so that there is no issue as to how large the gap needs to be to achieve an undisclosed insulation (see e.g. Fig. 2 of the Martin patent). Again, like the Noll patent, the Martin patent is so hopelessly vague as to dimensions and the insulation ability so as to render this reference useless when applied to the presently claimed invention.

Finally, the combination of the Bachman et al patent to the Martin patent is simply hindsight based on the present invention. There is no disclosure, teaching nor suggestion in the Bachman patent to modify it to add insulation. The Bachman patent is simply the disclosure of the conventional commercial child spill proof cup that is a single wall construction. And, as shown during the interview, these commercial cups have no insulation. Thus, the present invention was the first to discover that a child spill proof cup could be made such that the outer diameter was minimized to fit a child's hand (e.g. essentially maintaining the outside diameter of the conventional child spill proof cups) while maintaining a minimum height of the cup so that the cup did not easily tip over when containing liquid and while maintaining a maximum inside diameter of the inner cup that meets the fluid volume requirement of the cup (e.g. 6 or 9 oz. cup) and all the while achieving the claimed insulating ability -- "sufficient insulation ability so that the cup assembly takes at least about 100 minutes to reach 70°F when tested by the cup insulation test method.

Accordingly, it is respectfully submitted that each rejection raised by the Examiner in the May 9, 2003 Office Action has been overcome and that the above-identified application is now in condition for allowance.

#### E. CONCLUSION

Accordingly, it is respectfully submitted that each rejection raised by the examiner in the May 9, 2003, 2002 Office Action has been overcome and that the above-identified application is now in condition for allowance.

Favorable reconsideration is earnestly solicited.

Respectfully submitted,  
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Dated: August 11, 2003

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